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OCTOBER TERM, 1948

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No. ~~547~~ 20

OSCAR F. TREICHLER, EXECUTOR OF THE ESTATE OF
~~FRED A. MILLER,~~

Appellant,

vs.

STATE OF WISCONSIN

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

STATEMENT OPPOSING JURISDICTION

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INDEX

SUBJECT INDEX

	Page
Statement opposing jurisdiction	1
Nature of the case	1
Statutes involved	5
Statement of facts	11
No substantial federal question is presented	13
The 30% additional emergency tax imposed by Section 72.74 Wisconsin Statutes 1943 is not directly geared to the federal estate tax	13
Factually there is no extraterritorial taxation in this case	15

TABLE OF CASES CITED

<i>Butler Bros. v. McColgan</i> , 315 U. S. 501, 62 S. Ct. 701, 86 L. Ed. 991	16
<i>Edison California Stores, Inc. v. McColgan</i> , 30 Calif. (2d) 472, 176 Pac. (2d) 697, 183 Pac. (2d) 16	16
<i>Estate of Miller</i> , 254 Wis. 24	2
<i>Frick v. Pennsylvania</i> , 268 U. S. 473, 69 L. Ed. 1058, 45 S. Ct. 603	20

STATUTES CITED

Constitution of the United States, 14th Amendment
Wisconsin Statutes, 1943:

Sections 72.01 to 72.24	2, 3, 4
Sections 72.50 to 72.61	2, 3, 4, 9
Section 72.74	2, 3, 4

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STATEMENT OPPOSING JURISDICTION

Pursuant to paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, the appellee State of Wisconsin files this statement opposing jurisdiction.

Nature of the Case

This is an appeal by Oscar F. Treichler, as executor of the Will of Fred A. Miller, deceased, from a judgment of the Supreme Court of the State of Wisconsin determining the amount of Wisconsin inheritance taxes imposed by the

statutes of Wisconsin in the estate of said Fred A. Miller, deceased. Said judgment was entered December 15, 1948, upon appeal by the State of Wisconsin from the County Court, Milwaukee County, State of Wisconsin.

The decision of the Supreme Court of Wisconsin, upon which said judgment was entered, is dated December 15, 1948, and reported in Estate of Miller, 254 Wis. 24 (Adv. Sh.) — N. W. (2d) —. Said judgment of the Supreme Court of Wisconsin reversed the order of the County Court for Milwaukee County, State of Wisconsin, determining the Wisconsin inheritance taxes payable in said estate at \$659,333.05, and remanded the case with directions to enter an order determining the amount of said taxes at \$745,399.11.

The taxes involved are imposed by Sections 72.01 to 72.24, inclusive, Sections 72.50 to 72.61, inclusive, and Section 72.74, of the Wisconsin statutes of 1943, which so far as here material remain the same in the present Wisconsin statutes.

The provisions of Sections 72.01 to 72.24 Wisconsin Statutes impose a tax at graduated rates on transfers of property by will or descent. The rates and exemptions depend upon the relationship to the decedent and the amount of tax is computed separately as to each beneficiary upon the value of the interest that such beneficiary receives. This tax is commonly known as the Wisconsin "normal inheritance tax". Section 72.23 provides that the proceeds from said tax go into the State treasury for the use of the State for the general expenses of the State government.

By the provisions of Sections 72.50 to 72.61, Wisconsin Statutes 1943, a tax is imposed which is denominated an estate tax, that is in addition to the "normal inheritance tax" imposed by Sections 72.01 to 72.24. Such estate tax is an amount equal to the difference between the aggregate of the death taxes paid to the State and 80% of the Fed-

eral basic estate tax, which 80% is allowable as a credit on said basic estate tax under the Internal Revenue Act of 1926,

The provisions of Section 72.74, Wisconsin Statutes, 1943, impose an emergency tax, specifically stated to be in addition to the "normal inheritance tax" imposed by Sections 72.01 to 72.24 and the "estate tax" imposed by Sections 72.50 to 72.61, which is "equal to 30% of" said taxes. This additional 30% emergency tax is imposed upon the transfers of property that are taxable under the provisions of said other sections and is specifically to raise revenue

... for relief purposes, rehabilitation of returning veterans of World War II, construction and improvement of state institutions and other state property and for post-war public works projects to relieve post-war unemployment . . .

A controversy arose over the proper application of the provisions of Section 72.74 Wisconsin Statutes imposing the additional 30% emergency tax. Appellant, the executor of the estate, contended that the tax imposed by said Section 72.74 should be included in State inheritance or death taxes deducted from the Federal estate tax credit in computing the Wisconsin "estate tax" under Sections 72.50 to 72.61. The appellant also contended that in any case where the Wisconsin "estate tax" imposed by Sections 72.50 to 72.61 is applicable and there is, as is true in this case, any property of the decedent that has a situs outside of the State of Wisconsin, the total Wisconsin inheritance taxes under all of said sections must be so computed as to not exceed the maximum of the Federal estate tax credit, otherwise the same are unconstitutional as the extraterritorial taxation by the State of Wisconsin.

Appropriate proceedings were had in the County Court for Milwaukee County, State of Wisconsin, the decedent

having died a resident of the County of Milwaukee and State of Wisconsin. An order was entered therein interpreting and applying the provisions of Sections 72.50 to 72.61 and Section 72.74 as including 30% of the amount of normal taxes under Sections 72.01 to 72.24 in the State inheritance and death taxes deducted from the maximum Federal estate tax credit in computing the Wisconsin estate tax imposed by Sections 72.50 to 72.61.

The State of Wisconsin duly appealed therefrom to the Supreme Court of the State of Wisconsin, contending that the lower court erroneously interpreted and applied said statutes and that the proper interpretation and application thereof is that the Wisconsin "normal inheritance tax" imposed by Sections 72.01 to 72.24 is to be first computed; then the Wisconsin "estate tax" pursuant to Sections 72.50 to 72.61 is next to be computed, and in the computation thereof only the total Wisconsin "normal inheritance taxes" are to be included along with inheritance or death taxes paid to any other States in the deduction from the amount of the Federal estate tax credit; and thereafter the 30% emergency tax provided in Section 72.74 is to be computed upon the total of said Wisconsin "normal inheritance tax" and the Wisconsin "estate tax".

The executor, the appellant here, duly filed a motion for review contending that the order below was erroneous because it should have interpreted and applied said provisions of the Wisconsin statutes so that the total Wisconsin inheritance taxes do not exceed the 80% Federal estate tax credit and that if construed to impose Wisconsin inheritance taxes in the amount as contended by the State such statutes imposed a tax upon the transfer of property which did not have a tax situs in the State of Wisconsin and therefore were violative of the due process clause of the 14th Amendment of the Constitution of the United States.

The Supreme Court of the State of Wisconsin construed and applied such statutes in accordance with the contention of the State of Wisconsin and held that under the facts in this case no such federal question is presented and that the Wisconsin statutes involved as so interpreted are valid. Accordingly it reversed the order of the County Court and remanded the case to such court for the entry of an order determining the inheritance taxes in accordance with the contention of the State of Wisconsin).

Statutes Involved

The provisions of sections 72.01 to 72.24 Wisconsin Statutes 1943 imposing the "normal" inheritance taxes, so far as here material, are as follows:

"72.01 Subjects liable. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws or voluntary associations organized solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization, within the state, in the following cases, except as hereinafter provided:

"(1) WHILE A RESIDENT OF STATE. When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

"(2) NONRESIDENT'S PROPERTY WITHIN THE STATE.

"(3) TRANSFERS IN CONTEMPLATION OF DEATH. . . .

"(4) TRANSFER BEFORE OR AFTER PASSAGE OF ACT.

"(5) TRANSFER UNDER POWER OF APPOINTMENT. . . .

"(6) JOINT INTERESTS. . . .

"(7) INSURANCE PART OF ESTATE. . . .

"(8) BASIS OF TAX. The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted. Inheritance and estate taxes imposed by the government of the United States shall be deemed debts and shall be deducted in determining the value of the property transferred.

"(9) RECIPROCITY AS TO NONRESIDENT DECEDENTS.
• • • •

"72.02 Primary rates, where not in excess of twenty-five thousand dollars. When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemption specified in section 72.04, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

"(1) TWO PER CENTUM, WHERE. [Close relationships set forth.]

"(3) SIX PER CENTUM, WHERE. [More remote relationships set forth.]

"(4) EIGHT PER CENTUM, WHERE. [Distant relationships set forth.]

"72.03 Other rates, where in excess of twenty-five thousand dollars. The foregoing rates in section 72.02 are for convenience termed the primary rates. When the amount of the clear value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

"(1) [Twice primary rates on \$25,000 to \$50,000.]

"(2) [Three times primary rates on \$50,000 to \$100,000.]

"(3) [Four times primary rates on \$100,000 to \$500,000.]

"(4) [Five times primary rates over \$500,000.]"

"72.035 Rate limit. The tax imposed by section 72.02 and section 72.03 shall not exceed 15 per cent of the property transferred to any beneficiary."

"72.04 Exemptions. The following exemptions from the tax, to be taken out of the first twenty-five thousand dollars, are hereby allowed:

"(1) [Transfers to municipal corporations and for religious, charitable, educational, etc. purposes.]

"(2) [\$15,000 to widow, \$5,000 to husband, and \$2,000 to each beneficiary within close relationship in the 2% bracket]

"(4) [\$250 to each beneficiary within more remote relationship in 6% bracket]

"(5) [\$100 to each beneficiary within distant relationship in 8% bracket]

"(6) [Exemption of resident's tangible personal property located out of the state]

"(7) [Requests for burial lot, etc.]

"(8) Whenever a tax may be due from the estate, or the beneficiaries therein, of any resident or nonresident decedent, upon the transfer of any property, when the property or estate left by such decedent is partly within and partly without this state, or upon any stocks, bonds, mortgages or other securities representing property or estate partly within and partly without the state, any beneficiary of such estate shall be entitled to deduct only a proportion of his share of the debts, expenses of administration, and of his Wisconsin exemption, equal to the proportion which his interest in the property within the state or within its jurisdiction bears to his entire interest in such estate."

"72.12 County Courts. (1) Jurisdiction. The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its jurisdiction; and if two or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other county court.

"(2) . . .

"(3) . . .

"72.15 Hearing and determination of tax. (1) . . .

.

"(10) ORDER OF COUNTY COURT DETERMINING VALUE OF ESTATES AND LIABILITY TO TAX. Upon the determination by the county court of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be in the form prescribed by the department of taxation. A copy of the same shall be delivered or mailed

to the county treasurer, the state treasurer, and the department of taxation, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed.

... .

"72.23 Taxes; payment; application. All taxes levied and collected under sections 72.01 to 72.24, inclusive, less any expenses of collection, the percentage to be retained by the county, and the deduction authorized under sections 72.01 to 72.24, inclusive, shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature may by law direct."

The provisions of sections 72.50 to 72.61, Wisconsin Statutes 1943 imposing the state estate tax, so far as here material, are as follows:

"72.50 Tax imposed. In addition to the taxes imposed by sections 72.01 to 72.26, an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926, and amendments thereto, where the decedent at the time of his decease was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent, allowable under said United States revenue act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had sections 72.50 to 72.61 not been enacted. The tax imposed herein shall be collected by the several county treasurers for

the use of the state, and shall be accounted for and paid into the state treasury within the time and in the manner specified in section 72.19."

.

"72.61 Provisions applicable. The provisions of chapter 72, relating to the tax on inheritances and transfers, shall apply to the taxes imposed by sections 72.50 to 72.61 in so far as the same are applicable and not in conflict with the provisions hereof."

The provisions of section 72.74 Wisconsin Statutes 1943 imposing the 30% additional emergency inheritance tax, so far as here material, are as follows:

"(2) In addition to the taxes imposed by sections 72.01 to 72.24 and 72.50 to 72.61 of the statutes, an emergency tax for relief purposes, rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property and for post-war public works projects to relieve post-war unemployment is hereby imposed upon all transfers of property which are taxable under the provisions of said sections and which are made subsequent to March 27, 1935 and prior to July 1, 1945 which said tax shall be equal to 30 per cent of the tax imposed by said sections.

"(3) The emergency tax upon transfers of property imposed in subsection (2) shall be administered, assessed, collected and paid in the same manner, at the same time, and subject to the same regulations that are applicable, respectively, as provided for the administration, assessment, collection and payment of the taxes imposed in chapter 72 of the statutes; provided, however, that the entire amount of said emergency tax shall be collected and paid into the general fund.

"(4)

"(5)"

Statement of Facts

Fred A. Miller died testate on December 19, 1943, a resident of Milwaukee County, State of Wisconsin. His will was duly admitted to probate in the County Court for Milwaukee County, State of Wisconsin. He left a total estate of \$7,849,714.84, of which 87.52% or \$6,869,778.61 had a tax situs in the State of Wisconsin and only 12.48% or \$979,936.23 was located in and subject to taxation in the states of Illinois and Florida. Because of its size the death taxes imposed by the United States amounted to \$3,076,131.18.

After allowance of deductions, including the federal estate taxes, there was a net estate of \$3,803,378.42 subject to Wisconsin inheritance taxes. The allowance of deductions was on a pro rata basis as provided in section 72.04 (8) Wisconsin Statutes 1943. Such deductions totalling \$3,066,400.19 included \$2,690,999.56 as 87.48% of the total federal estate taxes of \$3,076,131.18. [The difference between this 87.48% and the 87.52% arises out of adjustments not here material.]

At the time of the decedent's death, sections 72.01 to 72.24, Wisconsin Statutes 1943 imposing the Wisconsin "normal inheritance tax", sections 72.50 to 72.61 Wisconsin Statutes 1943 imposing the Wisconsin "estate tax", and section 72.74 Wisconsin Statutes 1943 imposing an additional 30% emergency inheritance tax, were all in effect and applicable.

On the net estate of \$3,803,378.42 subject to Wisconsin inheritance taxation the total "normal" inheritance taxes computed in accordance with and under sections 72.01 to 72.24 Wisconsin Statutes 1943, amounts to \$220,682.12.

The 80% of the *basic* federal estate tax, which is allowable under the Internal Revenue Act of 1926 as a credit on the federal basic estate tax, amounts to \$630,709.62. Inheritance taxes of \$35,616.26 were paid to the State of Illinois,

and estate taxes of \$21,709.45 were paid to the State of Florida. The total of said Wisconsin "normal" inheritances, the Illinois inheritance taxes and the Florida estate taxes is \$278,007.83. The 80% allowable Federal estate tax credit thus exceeds said total state taxes by \$352,701.79. Under the provisions of sections 72.50 to 72.61 Wisconsin Statutes 1943 the estate is therefore subject to the Wisconsin "estate" tax imposed by said sections and the amount of such tax is \$352,701.79.

Under the provisions of section 72.74 Wisconsin Statutes 1943 the estate is also subject to a Wisconsin emergency inheritance tax "equal to 30%" of said Wisconsin "normal" inheritance tax and said Wisconsin "estate" tax. Such emergency tax so calculated amounts to \$172,015.20. The total of such Wisconsin taxes is thus \$745,399.11. The computation of said taxes is as follows:

TABLE "A"

(1) Wisconsin Normal Inherit. Taxes	\$220,682 12
(2) Wisconsin Estate Tax:—	
80% of U. S. Estate Tax	\$630,709 62
Less: (a) Wis. Normal Taxes	
(1) above	\$220,682 12
(b) Ill. Inherit. Taxes	35,616 26
(c) Fla. Inherit. Taxes	21,709 45
Total State Taxes	278,007 83
Difference is Wis. Estate Tax	352,701.79
(3) Wisconsin Emergency Tax:—	
Wis. Normal Taxes (1) above	220,682 12
Wis. Estate Tax (2) above	352,701 79
Total	573,383 91
Emerg. Tax is 30%	172,015 20
Total Wisconsin Inheritance Taxes	<u>\$745,399.11</u>

Such computation is in accordance with the interpretation and application given to the applicable Wisconsin statutes by the Supreme Court of Wisconsin and its remand directs the County Court for Milwaukee County to determine the Wisconsin inheritance taxes payable in the estate.

It is from the judgment of the Supreme Court of Wisconsin to this effect that the appellant executor brings this appeal.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Jurisdiction is asserted by the appellant upon the claim that section 72.74 Wisconsin Statutes 1943 imposes the 30% additional emergency tax extraterritorially and therefore is violative of the due process provision of the 14th Amendment to the Constitution of the United States. This assertion is based solely upon appellant's proposition that this 30% emergency tax is "directly geared" to the federal estate tax, which is laid upon property both within and without the State of Wisconsin, and therefore it is imposed upon property outside the taxing jurisdiction of the State of Wisconsin.

1. *The 30% additional emergency tax imposed by Section 72.74 Wisconsin Statutes 1943 is not directly geared to the federal estate tax.*

This is self-evident. On the contrary it is computed at 30% of the amount of two other independent taxes. By its express terms this emergency tax is an amount "equal to 30 per cent" of the amount of the "normal" Wisconsin inheritance tax imposed by sections 72.01 to 72.24 and the Wisconsin "estate" tax imposed by sections 72.50 to 72.61.

Both the "normal" inheritance tax and the Wisconsin estate tax are computed and imposed independently of this emergency tax. No question is raised as to the validity of those taxes and they must therefore stand as admittedly valid. They are computable and payable regardless of the existence of this emergency tax. Such taxes are payable in the same amount even though this 30% emergency tax did not exist. These two other taxes were in effect and operation before the 30% additional

emergency tax was adopted, and the 30% additional tax is an emergency tax whose repeal would in no way affect the amount of said other taxes.

It is not until and after the amount of said other taxes is computed and fixed that this emergency tax is laid and it is computed at the amount which is "equal to" 30% of the amount of such other taxes. In other words, such other independent taxes are taken at their calculated amounts and the emergency tax is figured thereon without any reference to how such amounts were calculated. They are taken as a fixed amount of taxes in dollars and cents and then the 30% figure is applied to such dollars and cents amounts to obtain the amount of the emergency tax. That this result may bear some relationship, mathematical or otherwise, to the amount of the federal estate tax credit or even to the amount of the federal estate tax is purely coincidental.

The statement in appellant's jurisdictional statement that the 30% additional emergency inheritance tax imposed by section 72.74 is always 30% of the federal estate tax credit and 24% of the federal basic estate tax is both incorrect and misleading. The tables submitted in connection with such statement do not state the true picture. Such tables are correct and the calculations therein are applicable ~~only~~ where the entire property of the decedent is in the State of Wisconsin and the "normal" Wisconsin inheritance taxes under sections 72.01 to 72.24 are less than the 80% federal estate tax credit. Where that is true then obviously no question of extraterritorial taxation can possibly arise. Accordingly the examples in said tables prove nothing that is relevant to this case.

Furthermore, the appellant makes another erroneous statement where, in summarizing the Wisconsin inheritance tax laws, it is stated that the Wisconsin "estate" tax of sections 72.50 to 72.61 is "levied upon the whole estate of

the decedent". There is no such language in those sections and such tax, being grounded upon jurisdiction to tax because of domicile of the decedent, is limited to and levied only upon the Wisconsin estate of the decedent.

This Wisconsin "estate" tax does not accrue in by far the majority of Wisconsin estates. It is the exceptional case in which it is applicable at all. This arises because, except where the estate is in excess of approximately \$3,000,000 or where there are very peculiar circumstances, the "normal" Wisconsin inheritance tax computed under Sections 72.01 to 72.24 always exceeds the amount of the Federal estate tax credit of 80% of the Federal basic tax. The peculiar circumstances, and they are quite rare, are (1) where the estate is divided among a very large number of beneficiaries, (2) where successive transfers take place to a widow and then to the children within 6 years and credit is allowable for the tax paid by the widow, and (3) where certain bequests to charitable, educational, etc. purposes are exempt under the Wisconsin law but not under the Federal estate tax.

It is thus abundantly clear that the 30% additional emergency tax of Section 72.74 is not geared to the Federal estate tax but to the amount of the "normal" Wisconsin inheritance tax of Sections 72.01 to 72.24 and the amount of the Wisconsin "estate" tax of Sections 72.50 to 72.61, both of which taxes are imposed solely upon the Wisconsin estate of the decedent and are not laid upon any property other than that which is within the State of Wisconsin.

2. Factually there is no extraterritorial taxation in this case.

The 30% additional emergency tax is not laid extraterritorially by the provisions of Section 72.74 nor is it applied in this case so as to tax any property other than that portion of the decedent's estate which is within the

State of Wisconsin. The language of subsection (2) is that this 30% additional tax "is hereby imposed upon all transfers of property which are taxable under the provisions of" Sections 72.01 to 72.74 and Sections 72.50 to 72.61. This language makes it clear that this 30% additional tax is definitely limited to the same property, namely the Wisconsin property, that is taxed by the "normal" Wisconsin inheritance tax and the Wisconsin estate tax.

Appellant notes that the total of the Wisconsin inheritance taxes in this case exceeds the amount of the Federal estate tax credit of 80% Federal basic estate tax and that in the absence of this 30% additional emergency tax the total of the Wisconsin inheritance taxes would not exceed such Federal credit. Appellant says that because it is the imposition of this 30% additional emergency tax which makes the total Wisconsin taxes exceed the Federal credit, therefore such 30% additional emergency operates here to tax property which is outside of the State of Wisconsin. But, that is not enough to carry the burden which the appellant assumes when he attacks the validity of this tax.

The situation here is comparable to the instance of where one attacks a State income tax apportionment formula that is used in allocation of the income from the transaction of multi-state business. In the cases involving State income tax apportionments the test is whether the State statute is fairly calculated to assign to that State that portion of the net income reasonably attributable to business done there. If so, the statute is valid and no constitutional question exists. The burden is on him who attacks the statute as taxing extraterritorially. He must carry that burden by showing by "clear and cogent evidence" that the statute results in extraterritorial values being taxed. *Butler Bros. v. McColgan* (1942), 315 U. S. 501, 62 S. Ct. 701, 86 L. Ed. 991; *Edison California Stores, Inc. v. McColgan* (1947), 30 Calif. (2d) 472, 176 Pac. (2) 697, 183 Pac.

(2) 16. There is no clear and cogent evidence in this case that the 30% additional emergency tax of Section 72.74 results in extraterritorial taxation. Rather the facts are to the contrary.

In the first place the mere fact that the total of the Wisconsin inheritance taxes exceeds the Federal estate tax credit cannot render such Wisconsin inheritance taxes invalid. For if that were true then there would be invalidity in the Wisconsin inheritance taxes in almost all Wisconsin estates. As previously noted the amount of the "normal" Wisconsin inheritance taxes under Sections 72.01 to 72.24 exceeds any Federal credit allowable in all but the very large estates of over about \$3,000,000 and in the rare case where special circumstances may result in the Wisconsin "normal" tax being less than the Federal credit.

But, clearly the mere mathematical fact of the Wisconsin "normal" taxes being in excess of the Federal estate tax credit does not render such "normal" taxes invalid as taxing extraterritorial values. This demonstrates that the mathematical result that the *total* Wisconsin inheritance taxes exceed the Federal tax credit does not establish or show extraterritorial taxation.

Furthermore, it is clear that the Wisconsin "estate" tax of Sections 72.50 to 72.61 would be payable and in the same amount, which is also true of the "normal" inheritance taxes of Sections 72.01 to 72.24, regardless of the existence of this 30% emergency tax. The validity of such other taxes is not questioned as operating to tax extraterritorially. It thus logically follows that the admeasuring of the additional emergency tax at a percentage of the amount of such other admittedly valid taxes does not and cannot of itself operate as extraterritorial taxation.

In addition, in instances where the amount of the "normal" Wisconsin inheritance taxes under Sections 72.01 to

72.24 exceeds the Federal tax credit, which is practically all Wisconsin estates, not only is it true that the fact the normal taxes do exceed the Federal credit does not make the "normal" tax invalid or extraterritorial taxation to the extent of such excess, but the 30% additional emergency tax is applied to such total Wisconsin "normal" inheritance taxes. In such cases the amount of the emergency tax likewise is in excess of the Federal tax credit. But, clearly that is of no moment and it does not cast any doubt upon the validity of the emergency tax in those cases. The 30% emergency tax in those cases not only itself is beyond the Federal tax credit but it is computed at a percentage of a previously computed tax which exceeds the Federal tax credit. In this same connection it may be noted that in many Wisconsin estates the total of the Wisconsin "normal" inheritance taxes under Sections 72.01 to 72.24 not only exceeds the Federal tax credit but exceeds the total of all Federal death taxes. Yet, the 30% emergency tax is equally applicable and valid in such cases.

The foregoing shows that the mere fact that the total of the Wisconsin inheritance taxes is in excess of the amount of the Federal estate tax credit will not support appellant's assertion of extraterritorial taxation. Therefore if there is to be any support for this charge it must be found in a consideration of the facts from a mathematical point of view. But the facts rather than sustaining it clearly show to the contrary.

The net Wisconsin estate of the decedent which is subjected to the Wisconsin taxes is \$3,803,378.42 which is only 48.2% of the entire gross estate of \$7,849,714.84. Such Wisconsin net estate is arrived at by taking the total of the property located in Wisconsin which is \$6,869,778.61 and subtracting therefrom the allowable deductions of debts, expenses of last illness and burial, cost of administration

and federal estate taxes. These were all deducted on a prorata basis of 87.48%. [The very slight difference between this and 87.52% arises out of adjustments in valuations not here material.] Thus the total of all federal estate taxes (not just the federal basic estate tax) of \$3,076,131.19 was allowed and included in such deductions at \$2,690,999.56 as 87.48% of the total tax. This reduced the Wisconsin net estate by the full proportionate share of the total federal taxes referable thereto. Such deduction allowances, and especially the allowance of a deduction for federal estate taxes, are purely matters of legislative grace. The State of Wisconsin is not required to make any such allowance but does so as a matter of reducing its taxation to an imposition on the net value actually transmitted to the beneficiaries. As previously stated the effect of these deductions is to reduce the net estate subjected to taxation in Wisconsin to \$3,803,378.42 or only 48½% of the entire property of \$7,849,714.84 left by the decedent; of which total property only \$979,936.23 or 12½% was outside the State of Wisconsin.

If instead of deducting the \$3,066,400.19, which is 87½% of the allowable items, from the Wisconsin gross estate of \$6,869,778.61, the allowable items were subtracted at 100% or \$3,505,258.50 from the total gross estate everywhere of \$7,849,714.84, the result would be \$4,344,456.34 as the total net estate everywhere. Applying to this last figure the 87½ percentage for the Wisconsin property produces \$3,803,378.42 which is the amount of the net estate in Wisconsin that is subjected to its taxes. This shows that, in the design of the Wisconsin inheritance taxes and their application to this estate, the objective is to confine their imposition to property within the state and they have been so applied here.

This result is found as a fact by the Supreme Court of Wisconsin where it notes that more than 86% of the property was admittedly located in Wisconsin. The accurate percentage is 87.52%. The federal estate tax credit which enters into the Wisconsin estate tax imposed by sections 72.50 to 72.61 is however only 80% of the federal basic estate tax. The other 20% more than absorbs, or is attributable on any mathematical basis to, the 12.48% of the gross estate which is outside of Wisconsin.

It is also significant as respects this Wisconsin estate tax that in its calculation there is deducted out the total death taxes paid the States of Illinois and Florida. This shows that such tax is levied only in respect of property situated in the State of Wisconsin.

The instant situation is in no way comparable to *Frick v. Pennsylvania*, (1925) 268 U. S. 473, 69 L. Ed. 1058, 45 S. Ct. 603. The Pennsylvania statute there involved expressly laid the taxes on the transfer of the property by a resident decedent whether it was in that state or elsewhere. No deduction was made for any taxes paid to the United States or to any other state. In computing the tax the value of tangible property located in New York and Massachusetts was admittedly included in the gross estate upon which the Pennsylvania tax was calculated. In that case there thus was a clear and express endeavor by the State of Pennsylvania to directly tax property which concededly was located in other states. The tax was applied to and calculated upon that property directly. Here the Wisconsin statutes do not attempt to impose taxes upon anything other than the property which is located in the State of Wisconsin. The language of the statutes on the contrary expressly restricts the taxes to property within the state. The values of property outside the State of Wisconsin are excluded from the value upon which the taxes are calculated.

Furthermore, deduction is made for federal estate taxes in arriving at the value of the estate upon which such taxes are calculated, and in computing the Wisconsin estate tax full deduction is made for the taxes paid to other states. The dissimilarity between the two cases is readily apparent.

From the foregoing it appears that no substantial federal question is here presented and that the Supreme Court of Wisconsin so held correctly.

Respectfully submitted,

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